



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2004

Ms. Carolyn Wright
Deputy General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2004-3004

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200486.

The Texas Department of Health (the "department") received a request for information pertaining to an incident that occurred on a specified date at a particular day camp. You state that some information has been or will be released to the requestor but claim that other requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

You inform us, and the submitted documents reflect, that the information at issue relates to the report and investigation by the department of complaints of abuse or neglect of a child in a facility licensed by the department. We therefore conclude that the submitted documents constitute “files, reports, records, communications, and working papers used or developed” by the department in conducting an investigation under chapter 261 or in providing services as a result of such an investigation *See* Fam. Code § 261.103(a)(3) (requiring that report of suspected abuse or neglect be made to state agency that operates, licenses, certifies, or registers facility in which alleged abuse or neglect occurred). Therefore, the submitted records are confidential under section 261.201 of the Family Code and may be disclosed only for purposes consistent with the Family Code and applicable federal or state law or under rules adopted by the department.

You indicate that the department has adopted section 1.207 of title 25 of the Texas Administrative Code to govern the release of this type of information. You also state that “[s]ection 1.207 references specific statutory exceptions that do not apply to the attached documents.” Based on your representation that the department’s rule regarding release of this information does not apply in this instance, the department must withhold the submitted documents in their entirety under section 552.101 of the Government Code as information made confidential by law. As our ruling on this issue is dispositive, we need not address your other arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839.

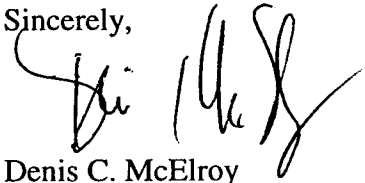
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis C. McElroy", written over a horizontal line.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 200486

Enc. Submitted documents

c: Mr. Hugh R. Jons
Adami, Goldman & Shufield, Inc.
9311 San Pedro, Suite 900
San Antonio, Texas 78216
(w/o enclosures)